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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Unbundling of Local Exchange Carrier Common Line Facilities	)	RM - 8614

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, pursuant to Section 1.405 (a) of the Commission's Rules, hereby comments on the Petition for Rulemaking ("Petition") filed by MFS Communications Company, Inc. ("MFS"), in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

CompTel supports the main thrust of the *Petition*, namely that the FCC should undertake to facilitate the unbundling of the local loop. CompTel urges the Commission to proceed to examine loop unbundling but to implement it in a manner that recognizes the interrelationship between this action and its other priorities, most notably the reform of carrier access charges. As a first step, CompTel submits that the FCC, in an expedited rulemaking, should adopt uniform technical standards for interconnection with unbundled loops. National interconnection architecture standards have the potential to facilitate resolution of the increasing number of state proceedings on local competition and to reduce entry barriers for local loop interconnectors.

Unbundled loop *pricing* issues, however, require a more deliberate approach. The pricing issues raised by the *Petition* should be addressed in the larger context of competition in all submarkets where providers rely on access to subscribers of the local loop for their customer base. The FCC should proceed to address these pricing issues with the objective of encouraging additional competition, both locally and in the long distance marketplaces, by achieving more economically efficient rate levels for access to local loop subscribers. The proposals in the MFS *Petition* underscore the extent to which access is overpriced by the LECs today, providing false incentives and distorting carrier investment -- and customer purchasing -- decisions. The Commission should ensure that unbundled loop pricing rules are part of a comprehensive strategy to remove incentives for such uneconomic behavior. In short, pricing rules need to be formulated so that carriers are not required to obtain unbundled loops to achieve access to end users on an economically rational basis.

Additionally, the Commission should recognize that local loop unbundling does not eliminate the local bottleneck. Typically, the end user will continue to be served by one and only one local service provider, especially if that provider has obtained control of the single loop to the customer's premise through unbundling. The Commission must place conditions on local loop interconnection so that local service competitors ("LSCs"), like traditional LECs, have equal access obligations and may not otherwise abuse this bottleneck.

II. STATEMENT OF INTEREST

CompTel is the principal industry association of the competitive interexchange industry. Its over 150 members provide a variety of services that rely upon access to end users through the local exchange. As explained herein, the MFS *Petition* makes clear that, as local competition is introduced, fundamental issues are raised concerning the pricing of such access. Accordingly, CompTel has a vital interest in the Commission's resolution of the MFS *Petition*.

III. THE FCC SHOULD BIFURCATE ITS CONSIDERATION OF THE TECHNICAL STANDARDS AND PRICING ISSUES RAISED BY THE MFS *PETITION*

In its *Petition*, MFS proposes that the FCC initiate a proceeding to develop rules in two general areas: (1) technical standards for loop unbundling and interconnection; and (2) pricing rules that would apply to interstate common line service on a mandatory basis and intrastate loop services on a voluntary basis. CompTel submits that the Commission should bifurcate its treatment of these two sets of issues.

A. The Commission Should Move Forward Quickly to Adopt Uniform Interconnection Standards.

The Commission can move forward rapidly on the adoption of uniform technical standards for loop unbundling. As the MFS *Petition* explains, there appear to be a limited number of network architectures employed by the LECs. This finite number suggests that it should not be overly time-consuming for the FCC to specify a set of efficient and technically feasible methods to support interconnection with each potential LEC configuration.

National standards are appropriate because interconnection architectures do not raise market-specific or state-specific issues. Rather, they are purely technical in nature. However, by adopting uniform national standards, the FCC will facilitate the expeditious conduct of state proceedings on local competition. Because an increasing number of states are taking up local competition issues, the public interest would be served if the Commission were to move on this matter quickly. Concomitantly, by encouraging uniformity, the Commission will promote local competition by minimizing entry barriers that could arise if potential LSCs face a different set of interconnection parameters in each jurisdiction. And, provided that proper pricing rules and safeguards are ultimately implemented, a competitive local marketplace can serve the public interest by promoting an even more vibrant interexchange marketplace.

B. The FCC Should Address Unbundled Loop Pricing Issues Separately and in the Larger Context of Access Pricing and Competition in All Sub-Markets.

In contrast with technical standards, pricing issues are much more complicated. Initially, the Commission must ensure that its approach to unbundled loop pricing is consistent with the pricing of access to the LEC network generally. Local loop unbundling introduces a new configuration by which retail communications services, as well as access services, would be provided. As is addressed in more detail below, the pricing of this configuration will further expose the fundamental deficiency in LEC access prices today: they are clearly excessive and send distorted signals to the marketplace. Because of the global impact of pricing rules on the further development of the competitive marketplace, the Commission should proceed cautiously and only after the opportunity for comprehensive debate.

IV. THE PRICING OF THE LEC NETWORK BY LSCs AND OTHER SERVICE PROVIDERS MUST BE REGULATED IN A COMPREHENSIVE AND CONSISTENT MANNER

The local network is uniquely suited to serve as a platform for the provision of a host of retail communication services, both local and long distance. The capability to use the network to provide retail local services should be available to all providers. Indeed, this is the underlying premise of the MFS *Petition* and of the move toward local competition, and CompTel strongly endorses it.

MFS seeks recognition that the common line facilities, indeed the LEC network as a whole, should serve as a transparent platform -- or a series of transparent platforms as defined by individual network elements -- upon which other functionalities may be added to provide retail services.[1] Many hope that the "information age" will usher in an explosion of new services and retail applications. MFS submits that

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[1] *E.g.*, Petition at 6, 13.

unbundling of the local loop will have that very result. Specifically, the unbundling of the local loop from common line facilities will introduce a new configuration that allows the loop purchaser to provide retail services *not just in competition with LECs but with other providers, including IXCs,* as well. For example, the purchaser of the unbundled loop could:

* provide local exchange service as the LEC does today;
* provide originating and terminating switched access service to other providers of retail service, such as IXCs, as do the LECs (and the CAPs through switched access expanded interconnection) today; and
* provide interstate long distance services in direct competition with IXCs.

CompTel agrees that such a goal is in the public interest, but only if the local network platform is priced economically and is made available to *all* retail service providers on non-discriminatory terms, conditions, and prices without the need for local facilities investments. In adopting pricing rules governing the unbundled loop, the FCC must also recognize such unbundling will create an entirely new *wholesale* configuration in addition to existing exchange access. The LEC pricing of these wholesale services must be consistent. Thus, the principles and policies governing other wholesale arrangements, such as interstate switched access services, should be the same as those governing the local loop. Only in this way will all service providers requiring access to the LEC network receive consistent marketplace signals that allow them to compete on an equal footing in all submarkets.

V. PRICING RULES GOVERNING UNBUNDLED LOCAL LOOPS, INCLUDING THE RESALE OF SUCH LOOPS, MUST BE DESIGNED TO SUSTAIN A COMPETITIVE INTEREXCHANGE MARKETPLACE

A. LEC Common Line Facilities Will Remain a Bottleneck.

The basic reality posed by the MFS *Petition* is that, for the foreseeable future, "[t]he local loop is and will remain the quintessential telecommunications bottleneck facility."[2] MFS adequately explains why neither cellular radio, PCS, nor cable television is an economically feasible alternative to the local loop.[3] Equally infeasible, MFS maintains, is the option of an LSC to build its own network.[4] In all four cases, the capital and other resources required to offer a real alternative to the local loop are prohibitive. This consideration alone practically precludes the replication of the local loop in most locations.

Even in those locations where the local loop is replicated, long distance and information service companies who need access to an end user's loop will still face a bottleneck no less than they do today. They will have to deal with the LSC selected by the end user, whoever that may be. Once the LSC succeeds in selling an end user a

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[2] *Petition* at 6.

[3] *Id.* at 6-8.

[4] *Id.* at 8. As MFS observes, dedicated circuits are also unacceptable substitutes for unbundled loops for a number of reasons, not the least of which is that, "[i]n effect, a private line is another form of bundling the loop." *Id.* at 11.

local loop, it can then exploit the loop against third parties (*e.g.*, IXCs) that require access to it to provide their service.[5]

As the MFS Petition makes clear, interstate common line charges currently are bundled with LEC switching charges (including the interconnection charge). MFS's *Petition* seeks access to an unbundled loop so that MFS may combine it with MFS-provided local switching. The great irony of the MFS *Petition*, however, is that *the loop must always be bundled with local switching to provide exchange service and switched access.* Unbundling the loop does not fundamentally change this reality. It simply enables a carrier other than the LEC to become the bundled purveyor of access service that unavoidably encompasses the charges for local switching, common line service, and any interconnection charge.

This is the fundamental paradox of loop unbundling. By itself, loop unbundling does not allow a provider of interexchange services to avoid charges for local switching (including an interconnection charge) and common line service. The replacement LSC (such as MFS) becomes the bundled provider with an ability to levy these same charges. *Only* carriers entering the local market through local switching investment are able to *avoid* these charges for calls originating from the subscriber and are in a position to *collect* these charges for all calls terminating with the subscriber.

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[5] CompTel does not suggest that LSCs will necessarily impose *higher* access charges than the LECs, but rather that LSCs will have the incentive to impose charges similar to those of the LECs. These charges have been shown to be significantly above cost. The FCC, therefore, should not expect local loop competition to reduce access prices to cost.

As with the local loop, however, it is not economically feasible for service providers to replicate local switching facilities in each locale where they desire to offer service. Yet, if the rate elements of local switching, common line service, and interconnection are seriously inflated above cost -- and there is no question today that they are -- then uneconomic switching investment may become the predicate to continuing to offer interexchange services. As a result, the Commission must address the overpricing of these rate elements in combination with loop unbundling to assure that the appropriate incentives are in place and to avoid seriously disrupting interexchange competition.

B. The Pricing of the Local Network for the Origination and Termination of Interstate Traffic Is Seriously Overpriced.

There is growing and indisputable evidence that the LECs' interstate switched access prices are seriously inflated above their economic costs. As a threshold proposition, it is well recognized that the carrier common line charge ("CCLC") in its entirety is nothing more than a pure subsidy element recovered from interexchange services. Similarly, the interconnection charge, which recovers *some* of the common costs previously recovered from transport service, is most, if not all, contribution.[6]

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[6] Evidence collected in state regulatory proceedings shows that some transport rates -- including the interstate rates for tandem switching -- continue to be priced far in excess of their economic resource cost. *See, e.g.,* Application for Enforcement of Appendix B, Section (B)(2), and Section II(B)(3) of the Modification of Final Judgment and Request for Expedited Treatment at 8-16, 22-31 (filed by CompTel with the U.S. (continued...)

Furthermore, evidence suggests that LEC charges for local switching are also inflated above their economic cost. Southern Bell's most recent (1992) rate stabilization filing before the Florida Public Service Commission, for example, revealed switching costs of approximately \$0.00213 per minute,[7] far below its interstate local switching rate of \$0.00832 per minute.[8]

The likely origin of such uneconomic pricing can be traced to the historical reliance on a fully distributed costing methodology to apportion LEC accounting costs between the states and the FCC. Combined with allocation techniques explicitly designed to inflate interstate revenue requirements (such as the use of DEM factors to allocate switching costs), the separations process has yielded access rate levels that dramatically exceed the economic resource costs for such access.

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[6](...continued)
Department of Justice on September 29, 1994) (BellSouth access transport rates are considerably above long run incremental costs). As a result, the interconnection charge recovers costs unrelated to access transport service and, had cost-based transport rates been established, would likely be even greater. *See, e.g.*, Initial Brief of AT&T in Docket No. 12784 (Texas Public Utilities Commission) at 2 (dated September 15, 1994) (the Southwestern Bell residual interconnection charge is *all* contribution).

[7] Southern Bell Telephone & Telegraph Company, Present and Proposed Rates and Revenues: E006 Switched Access Service, MFR Schedule E-1A, Fla. PSC Docket No. 92-0260-TL, page 988 of 1040.

[8] BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, 9th Revised Page 6-161, § 6.8.2(A).

The result of higher access prices is, not surprisingly, higher retail long distance prices, as the Commission has recently confirmed.[9] It follows that where access prices have been artificially high, the volume of long distance traffic has been uneconomically retarded. Because access prices have been highly inflated, the high volume fiber networks, both interexchange and local, constructed over the past decade have been underutilized.

The relief sought by MFS in its *Petition* will expose the uneconomic pricing of switched access service. Specifically, MFS proposes that carriers that have invested in local switching have access to an unbundled local loop at rates equal to the cost of the local loop.[10] As the *Petition* makes plain, this would allow access to the local common line without the significant uneconomic cost burdens that would remain -- perhaps with even greater magnitude -- on those carriers that have not made the independent investment in local switching. In particular, under MFS's proposals, LSCs purchasing the unbundled local loop would avoid the assessment of the per-minute CCLC[11] and the residual interconnection charge ("RIC") which are both pure subsidy elements. Similarly, LSCs would avoid the contribution components in the LECs' local

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[9] *Price Cap Performance Review For Local Exchange Carriers*, CC Docket No. 94-1, FCC 95-132 at ¶ 61 (April 7, 1995) ("We also conclude that the IXCs have passed on the savings they have received from lower interstate exchange access charges to end users.").

[10] *Petition* at 43-44. Alternatively, MFS requests a price which is *less* that the loop costs under an "inverse imputation" methodology.

[11] *Id.* at 43.

switching charges. Thus, it becomes obvious that the magnitude of the incentives for local switching investment is largely dictated by the overpricing of the switched access rate elements identified above.

C. All Access Pricing Rules, Not Just Those for the Unbundled Local Loop, Should Promote Economic Market Decisions.

Because these switched access rate elements are -- in the case of the CCLC and RIC -- pure subsidy elements or -- in the case of the local switching charge -- largely contribution, these investment incentives are mostly uneconomic. The Commission should seek to promote economic investment in communications facilities and economic use of the local network. The FCC should not require every retail service provider to make its own local switching investment in order to achieve rational access costs via an unbundled loop. Rather, the Commission must work toward eliminating uneconomic incentives at the same time as it opens the loop to other service providers.

Unless the Commission reforms access pricing, a carrier could achieve economic access costs only through loop unbundling and facilities-based local switching. Under the MFS proposal rational interstate access prices would be limited only to those firms that invest in local switching within those jurisdictions that establish local exchange competition in those geographic areas where traffic supports such competition. This, obviously, is an extremely limited remedy for the global problem of uneconomic pricing. Such a "solution" will hardly begin to yield the diversity of competitive benefits envisioned in the MFS *Petition*.

CompTel firmly believes that rational access pricing must be made available far more broadly. The MFS *Petition* presents the opportunity to address inflated access pricing in a far broader context than LSC interconnection to the local loop. The Commission should seize it and consider the effects of access pricing on competition in all markets where retail providers serve end users that access the network through the local loop.

D. New Pricing Rules Should Seek to Eliminate Non-Cost Based Rate Elements or at Least to Ensure Their Equitable Recovery

As a starting point, the FCC must address the pricing of those elements of switched access service that loop unbundling will allow some carriers to avoid. MFS contends for example that, in an unbundled loop environment, LSCs should not have to pay the per-minute CCLC. MFS observes that LECs will not have the ability to assess the CCLC on a usage basis against LSCs that deploy their own local switching functionality. However, because the CCLC is a pure contribution element, CompTel submits that it must be assessed in a competitively neutral manner.

The FCC must not permit LSCs to avoid this charge while continuing to assess it on competitors to those carriers. It has never been economic to recover the CCLC on a per-minute basis, because by exerting upward pressure on IXC rates, such recovery ultimately inflates interexchange rates and creates a disincentive for end users to fully utilize long distance services. Accordingly, as a move toward rational access pricing, the Commission should change the recovery of this subsidy element. It should be recovered on a per-line basis assessed on end users, like the end user common line charge. Alternatively, the CCLC should be a per-line charge assessed directly on the presubscribed carrier.

LEC pricing of local switching must also be rationally based on costs. As a result, firms will make the decision to invest in switching only for economically sound reasons. In addition, without rational pricing of local switching, long distance carriers and other retail service providers will face unreasonable entry barriers, and end users' use of long distance services will be retarded. The result of rational pricing, in contrast, is more efficient use of telecommunications facilities, the strengthening of competition, and expansion in consumer choice of both services and providers.

Finally, the FCC should move to eliminate the RIC unless a documented public policy justification can be established. In the interim, to the extent these non-access costs continue to be recovered from access customers, they must be recovered in a competitively-neutral manner. Any inequitable recovery of contribution from different classes of carriers distorts competitive investment decisions and customer usage.[12] Moreover, the residual contribution recovered through *any* switched access charge, not just the RIC, should be recovered on a non-discriminatory basis -- ideally through a

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[12] Indeed, this is an underlying premise in the Commission's *Transport Rate Structure* proceedings. *See*, *e.g.*, *Transport Rate Structure and Pricing*, Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 5341, 5343 (1991).

single interconnection rate element -- from all providers that use the local network, including LSCs in their capacity as providers of long distance services. If such an interconnection rate element is not adopted, then loop unbundling on the terms proposed by MFS will exacerbate the unequitable "contribution" burden carried by IXCs as a whole, and by smaller IXCs in particular.

VI. MARKET RULES MUST BE ADOPTED TO GOVERN LOOP UNBUNDLING IN RECOGNITION THAT, RELATIVE TO EACH END USER, A BOTTLENECK REMAINS

As explained earlier, the unbundling of the local loop will not eliminate the local bottleneck. It will merely distribute that bottleneck among several local service providers. As noted earlier, the loop must remain bundled with the first point of switching for exchange service and switched access. As is the case today, retail service providers such as IXCs typically will have access to each subscriber through *one and only one* local loop provider.[13]

Today's competitive and diverse IXC and information service marketplace depends upon access to the LEC network. If MFS's request for local loop unbundling is granted, each new LSC must accept obligations at the time it acquires access to the unbundled local loop if that competition is to be preserved. As MFS itself observes, "a rulemaking is necessary to clarify the respective obligations of incumbent LECs and

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[13] This is certainly true for single line customers, but is also likely for multi-line customers that select a single local provider.

competitive carriers [LSCs] who purchase loops on an unbundled basis."[14].
Specifically, LSCs should be required to provide equal access to their networks, and their access rates should be capped at the same level as IXCs. LSCs should also be required to file tariffs and otherwise comply with Title II common carrier obligations, including those proscribing discriminatory provision of service.

A. Equal Access

Existing LECs already bear a responsibility to provide other vendors with reasonable and nondiscriminatory access to their customers. In recognition that local loop unbundling will lead to a multiple bottleneck environment, this "equal access" obligation should also apply to new LSCs on the same basis as to the LECs. In this way, all IXCs will retain a realistic opportunity to serve end users regardless of who the local service provider is. Conversely, consumers will be able to choose both their local service provider and their long distance provider, rather than be forced to choose the two together. From the end users' perspective, only this result will be perceived as an increase in diversity and service options.

Notably, LSCs themselves will require equal access rules to ensure that they can interconnect with each other. Not only will LSCs need access to the incumbent LEC, but in the future LECs may need access to LSC loops. Accordingly, resolution of the equal access issue will be fundamental to both the development of local competition as

[14] *Petition* at 32.

well as the sustenance of a diverse IXC industry dependent on access to all LEC and LSC loops.

Local competition and loop unbundling will create novel and complicated market and regulatory issues. It may not be sufficient to extend current LEC equal access rules to LSCs. New rules for both LECs and LSCs may be required. Structural remedies for incumbent LECs may be deemed essential, particularly if the RBOCs are granted the ability to enter the interexchange market. These matters should be taken up by the FCC in a comprehensive manner in response to the MFS *Petition*.

B. Access Rate Ceilings

LSC access rates should be capped at the same level as those of the incumbent LECs. As noted, earlier, at current uneconomic LEC rate levels for switched access, long distance usage has been retarded and the introduction of innovative service has been discouraged. LSCs in an unbundled loop environment should not be permitted to exacerbate this situation by charging even higher rates than the LECs to non-LSCs as the price to serve end users subscribing to their services.[15]

C. Title II Regulation

Like the "equal access" requirement, LECs' obligations pursuant to Title II of the Communications Act of 1934, including the filing of access service tariffs and the

[15] *See discussion in* n. 5, *supra.*

prohibition against unreasonable discrimination and restrictions on resale, help sustain today's competitive marketplace in spite of the LEC bottleneck. It is important that these obligations remain in place, and that Title II regulation both promote competition among service providers that seek non-facilities-based access to end users and make available to those end users a diversity of service choices.

VII. CONCLUSION

For the foregoing reasons, in response to the MFS *Petition*, the FCC should institute an expedited rulemaking and adopt uniform technical standards for interconnection with unbundled loops. In addition, the Commission should address unbundled loop *pricing* and other, related exchange access pricing issues in a separate proceeding. The Commission should explore these pricing issues in the larger context of competition in all submarkets where providers rely on access to subscribers of the local loop for their customer base. Pricing rules should be implemented with the objective of encouraging additional competition, both locally and in the long distance marketplaces, through more economically efficient rate levels for access to local loop subscribers than exist today. Finally, in recognition that local loop unbundling will not eliminate the bottleneck with respect to individual end users, the Commission must place conditions on local loop interconnection so that local service competitors, like traditional LECs, have equal access obligations and may not otherwise abuse their position as bottleneck providers of access to the local loop for the end users they serve.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 1995, I caused copies of the foregoing "Comments of The Competitive Telecommunications Association" to be mailed first-class mail, postage-prepaid to the following:

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